IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

WP(C).No. 6053 of 2007(U)

PETITIONER:

DR.V.VENUGOPALAN,
VELAYUDHA PHARMACY, M.G.ROAD,
PADMA JUNCTION, ERNAKULAM.

BY ADV. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SRI.M.F.MOHAMMOD SIYAD
SRI.N.P.SREEJITH

RESPONDENTS:

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1. CORPORATION OF COCHIN, REPRESENTED BY
ITS SECRETARY, CORPORATION OFFICE, ERNAKULAM,
KOCHI-682 011.

2. THE SECRETARY,
CORPORATION OF COCHIN, CORPORATION OFFICE,
ERNAKULAM, KOCHI-682 011.

ADDL. RESPONDENT

3. C.V.SIDJEEMDRAN
S/O VELAYUDHAN
AGED 49 YEARS
VELAYUDHAN VAIDYER BUILDING
PADMA JUNCTION, ERNAKULAM

Impleaded vide order dated 3-4-07 in I.A.No.4126/07

BY ADV. SMT.M.K.PUSHPALATHA,SC,COCHIN CORPORATI
SRI.P.GEORGE WILLIAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1 TRUE COPY OF THE SALE DEED DTD. 5-1-98

EXT.P2 TRUE COPY OF THE ORDER ISSUED BY RESPONDENTS DTD. 18-1-06

EXT.P3 TRUE COPY OF ORDER DTD. 28-2-06 ISSUED BY RESPONDENTS

EXT.P4 TRUE COPY OF ORDER OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS IN APPEAL NO.155/2006 DTD. 8-6-06

EXT.P5 TRUE COPY OF THE ORDER IN MOP 1/38271/05 DTD. 28-10-06 ISSUED BY R2

EXT.P6 TRUE COPY OF ORDER PASSED BY TRIBUNAL FOR LOCAL SELF GOVT. INSTITUTIONS IN APPEAL NO.413/2006 DTD. 20-12-2006

THIRD RESPONDENT'S EXHIBITS

EXT.R3(1) TRUE COPY OF THE COMMON JUDGMENT DTD. 16-6-06 IN A.S. NOS.225/2005 AND 226/2006 VIth ADDL. DISTRICT COURT, ERNAKULAM

EXT.R3(2) TRUE COPY OF THE COMPLAINT DTD. 14-11-05 TO R2.

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

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W.P.(C).No. 6053 OF 2007

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Dated this the 24th day of July, 2007

JUDGMENT

Petitioner challenges Exts.P2, P5 and P6. Case of the petitioner in brief is as follows:

Petitioner's mother Ammalu was the owner of 9.45 cents of land in Survey No.1667 of Ernakulam Village. She sold 3 cents on the southern portion of the said property. In the remaining property, she constructed the foundation for a three storied building and constructed the ground floor and major portion of the first floor. She conveyed the right over the first floor of building to her four daughters as per gift deed. She executed sale deed transferring the right to construct the second floor to the petitioner and additional third respondent. Petitioner's mother conveyed portions of the ground floor of the building to the tenants as per separate sale deeds. Thereafter petitioner executed sale deed conveying his entire right over the second floor of the building to the additional third respondent. On

06-01-1998 Petitioner's mother executed sale deed conveying the northern room of the ground floor having an area of 492 square feet with proportionate undivided share over the property to the petitioner. According to the petitioner, petitioner was in occupation and possession of the said room which is having door No.40/5937 for many decades. Due to financial difficulty, petitioner who is an Ayurvedic Doctor gave a portion of the room on rent to one K.A.Siraj on 31-05-2003 for conducting cool bar. It is the further case of the petitioner that the additional third respondent (who was not made a party originally) become inimical to the petitioner and filed a suit before the Munsiff Court and he caused three sisters of the petitioner to file a suit claiming right over the staircase room. It is stated that by common judgment both suits were dismissed. Ext.P2 is the provisional order which is caused to be issued to the petitioner. Vide Ext.P3, without hearing the petitioner, final order was passed directing to remove the unauthorisedly constructed shop room and wall Petitioner preferred appeal which was allowed vide Ext.P4. By Ext.P4, the Tribunal directed to pass fresh orders under section 406(3) of the Municipality Act based on Ext.P2 and

after rendering an opportunity of being heard to the petitioner and after considering the possibility of regularisation of the structure described in Ext.P2. Ext.P5 order was passed by the Corporation without complying with Ext.P4 order. Petitioner carried the matter in appeal before the Tribunal which passed Ext.P6. Petitioner challenges Exts.P5 and P6.

2. Counter affidavit is filed by the additional third respondent. Therein it is interealia stated that by Ext.R3(1) the appellate court allowed the appeals filed by the additional third respondent and the sisters of the petitioner. Learned counsel for the additional third respondent took me through the judgment to point out that it is clear on the basis of the commission reports made available before the court that petitioner has committed encroachment on the open space and put up the construction.

3. I heard learned counsel appearing for the parties.

4. Learned counsel for the petitioner would submit that the third respondent has obtained a decree and that can be executed. He would submit that counter affidavit is not filed by the first and second respondents. He would also submit that it is the case where construction is within the area covered by Ext.P1

sale deed and there is some slight difference in the measurement.

5. I find that the Tribunal has elaborately considered the matter and has come to conclusion that the petitioner committed encroachment on the open space. Having regard to the nature of the construction put up, it is found that it is in violation of the building rules. Tribunal also considered the possibility of regularisation and found that under Rule 143 regularisation cannot be done in violation of the building rules and as encroachment is found in the open space, it is found that there is no merit in the appeal. Petitioner challenges the action taken by the local authority. The fact that the third respondent has obtained a decree and that it can be executed cannot deprive the statutory authority of its power to take action under the Municipalities Act for removal of encroachment. I also note that the conduct of the petitioner in stating that the suits have been dismissed is something which should enter into the exercise of my discretion against the petitioner. This is as the judgment of the appellate court which in fact refers to the commission reports also to note that there is encroachment committed by the

petitioner into the open space was delivered much prior to the filing of the writ petition namely on 16/06/2006. This means that the petitioner has not taken the court into confidence on a matter which was relevant.

Having regard to all facts, I do not think that the petitioner has made out a case for interference under Article 226 of the Constitution. Writ petition fails and it is dismissed.

(K.M.JOSEPH, JUDGE)

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